

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and their impact on the Gas Price Spikes experienced at the California Border from March 2000 through May 2001.

Investigation 02-11-040

**ADMINISTRATIVE LAW JUDGE'S RULING
APPROVING MODIFIED PROTECTIVE ORDER**

This ruling approves the text of a Modified Protective Order designed for use during this proceeding to protect the confidential material produced in discovery by the various parties and non-parties to the proceeding. The final version of the Modified Protective Order, attached hereto as Appendix A, reflects negotiations among the parties to be bound, as well as the results of Law and Motion hearings held before me. I have reviewed the Protective Order and find it reasonable for the purposes proposed by the parties.

Therefore, **IT IS RULED** that all Participants and Non-Parties in this proceeding (as those terms are defined in the Modified Protective Order) shall, if they wish to receive Protected Materials (a term also defined in the Modified Protective Order) be bound by the Modified Protective Order and sign the Non-Disclosure Certificate accompanying the Modified Protective Order.

Dated November 24, 2003, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas
Administrative Law Judge

APPENDIX A

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Order Instituting Investigation into the)	I. 02-11-040
Gas Market Activities of Southern)	
California Gas Company, San Diego Gas)	
and Electric, Southwest Gas, Pacific Gas)	
and Electric, and Southern California)	
Edison and their impact on the Gas Price)	
Spikes experienced at the California)	
Border from March 2000 through May)	
2001)	

MODIFIED PROTECTIVE ORDER FOR

INVESTIGATION 02-11-040

1. This Modified Protective Order shall govern access to and the use of all Protected Materials in this proceeding as hereinafter defined. Notwithstanding any order terminating this docket, this Modified Protective Order shall remain in effect for two years after a final and unappealable order terminating this proceeding, or until, after notice and an opportunity to be heard, it is specifically modified or terminated by the Assigned Commissioner, the Assigned Administrative Law Judge ("Assigned ALJ"), the Law and Motion Administrative Law Judge ("Law and Motion ALJ") or the California Public Utilities Commission ("CPUC" or "Commission"). This Modified Protective Order does not address the right of employees of the Commission acting in their official capacities to view Protected Materials, because Section 583 of the Public Utilities Code and the Commission's General Order 66-C already require Commission employees to maintain the confidentiality of such Protected Materials.

2. A Participant, as hereinafter defined, may designate as protected those materials which customarily are treated by that Participant as sensitive or

proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury.

3. A Non-Party, as hereinafter defined, may designate as protected those materials which customarily are treated by that Non-Party as sensitive or proprietary, which are not available to the public generally, and which, if disclosed freely, would subject that Non-Party or its customers to risk of competitive disadvantage or other business injury.

4. Definitions -- For purposes of this Order:

- a. The term "Participant" shall mean those entities and/or individuals who have entered an appearance in this proceeding as a "Respondent" or an "Interested Party, including the Commission's Office of Ratepayer Advocates." Those who have appeared in this proceeding on an "Information Only" basis shall not be regarded as a Participant for the purposes of this Modified Protective Order.
- b. The term "Non-Party" shall refer to an entity or individual who has not entered an appearance in this proceeding as an "Interested Party" but is producing materials for use in this proceeding pursuant to discovery requests [or a subpoena] from a "Respondent" or an "Interested Party" in this proceeding.
- c. The rights and obligations within this Protective Order shall apply to a Non-Party.
- d. (1) The term "Protected Materials" means (A) materials (including depositions) in either hardcopy or electronic form provided by a Participant or Non-Party in response to discovery requests and designated by such Participant or Non-Party as protected; (B) any information contained in or obtained from such designated materials;

(C) any other hardcopy or electronic materials which are made subject to this Modified Protective Order by the Commission, by the Assigned Commissioner, by the Assigned ALJ, by the Law and Motion ALJ, by any court or other body having appropriate authority, or by agreement of the Participants; (D) hardcopy or electronic notes of Protected Materials; and (E) hardcopy or electronic copies of Protected Materials. The Participant or Non-Party producing the Protected Materials shall physically mark on each page the term "PROTECTED MATERIALS" or words of similar import - or otherwise clearly designate that they are Protected Materials. If the Protected Materials are produced in electronic form, the "PROTECTED MATERIALS" designation shall be inserted on each page as a header or a footer, or otherwise be clearly designated that they are Protected Material. Protected Materials produced in electronic form may be downloaded onto a secure computer network or onto secure computer hard drives for review and analysis purposes. Protected Materials may not be transmitted by the Interested Party or Respondent that receives such Protected Material by the Internet.

(2) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Protected Materials produced or converted into electronic form that are copied onto a computer network, computer hard drives, or any other non-hardcopy medium (including, without limitation, electronic, magnetic, and optical backup copies, CDs, mini-discs, diskettes, zip drives, and other storage devices) shall be regarded as Electronic Notes of Protected Materials. Notes of Protected Materials and Electronic Notes of Protected Materials are

subject to the same restrictions provided in this order for Protected Materials.

(3) Protected Materials shall not include information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Modified Protective Order or any other agreement or duty to keep the information confidential.

- e. The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Reviewing Representatives who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Modified Protective Order, and that such Reviewing Representatives have read the Modified Protective Order and agree to be bound by it.
- f. The term "Reviewing Representative" shall mean a person: (1) engaged in the conduct of this proceeding; (2) who needs access to Protected Materials in order to carry out that person's responsibilities in this proceeding; (3) who has signed a Non-Disclosure Certificate; and (4) who falls within one or more of the following categories:

- (1) an attorney who has made an appearance in this proceeding for a Participant;
- (2) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this proceeding, other than employees or other representatives precluded from becoming Reviewing Representatives by Paragraph 9;
- (3) attorneys associated for purposes of this proceeding with

- an attorney described in (1);
- (4) experts retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding, other than experts precluded from becoming Reviewing Representatives by Paragraph 9;
- (5) paralegals, secretaries, and other support personnel working for an attorney or expert described in (1), (3), or (4); or
- (6) a person designated as a Reviewing Representative by order of the Assigned Commissioner, the Assigned ALJ or the Commission.

5. Protected Materials shall be made available under the terms of this Modified Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 8, 9 and 10.

6. Protected Materials shall remain available to Participants until an order terminating this proceeding becomes no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant or Non-Party that produced them, and destroy Notes of Protected Materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 7 below. Electronic Notes of Protected Materials shall be deemed to have been destroyed at the time they have been deleted from the computer network, hard drives, or any other non-hardcopy medium (including, without limitation, electronic, magnetic, and optical backup copies, CDs, mini-discs, diskettes, zip drives, and other storage devices) on which they

were maintained. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant or Non-Party an affidavit stating that, to the best of its knowledge: (1) all Protected Materials other than copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials have been returned; (2) all copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials either have been returned or will be maintained in accordance with Paragraph 7; and (3) all Notes of Protected Materials and Electronic Notes of Protected Materials have been destroyed. Until they are returned or destroyed, all Protected Materials and Notes of Protected Materials shall remain subject to the Modified Protective Order.

7. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 9 and 10.

8. Protected Materials, Notes of Protected Materials, and Electronic Notes of Protected Materials shall be treated as confidential by each Participant and Reviewing Representative in accordance with this Modified Protective Order and the Non-Disclosure Certificate executed pursuant to Paragraph 10. Protected Materials, Notes of Protected Materials, and Electronic Notes of Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except: (1) pursuant to a document filed or served in this proceeding in accordance with Paragraph 13; or (2) to a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Participants and their Reviewing Representatives may use Protected Materials, Notes of Protected Materials, Electronic Notes of Protected Materials, and information contained therein solely

for the purpose of litigating the issues in this proceeding. Participants and their Reviewing Representatives may not use Protected Materials, Notes of Protected Materials, Electronic Notes of Protected Materials, and information contained therein for any other purpose or in any other regulatory or judicial proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall become Notes of Protected Materials.

9. Unless otherwise agreed by a Participant or Non-Party producing Protected Materials, or ordered by the Assigned ALJ, the Law and Motion ALJ, or the Commission, Participants' employees or consultants who engage in or directly supervise the marketing or trading of natural gas, electricity, or related financial derivatives may not become Reviewing Representatives. If agreed to by a Participant or Non-Party producing Protected Materials, such employees or consultants will become Reviewing Representatives only with respect to the Protected Materials of that particular Participant. The number of Reviewing Representatives for a Participant must be reasonable, and nothing in this order shall preclude a party from bringing a motion seeking to limit the number of Reviewing Representatives designated by a Participant on the grounds that a Participant has exceeded this reasonableness threshold. Participants may not designate as a Reviewing Representative a person not described in Paragraph 4(f) above.

10. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Modified Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate. Participants shall serve executed Non-Disclosure Certificates on all "Respondents" and "Interested Parties" on the official service list in this proceeding and all Non-Parties within five

business days after they are signed. Participants shall also serve all Modified Protective Order Non-Disclosure Certificates that have already been executed on each Non-Party within five business days of the production of Protected Materials by that Non-Party.

11. A Reviewing Representative may exchange Protected Materials with any other Reviewing Representative for the same Participant as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. The foregoing does not preclude Reviewing Representatives for different Participants from discussing and/or sharing analyses of Protected Materials, analyses of Notes of Protected Materials and information contained therein as long as each Reviewing Representative has executed a Non-Disclosure Certificate. Reviewing Representatives and Participants receiving such shared analyses shall treat them as Notes of Protected Materials. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 4(f), access to Protected Materials by that person shall be terminated and that person shall either (a) destroy all Protected Materials, Notes of Protected Materials and Electronic Notes of Protected Materials in his or her possession, (b) give all Protected Materials, Notes of Protected Materials and Electronic Notes of Protected Materials in his or her possession to the Participant for whom he or she had been employed at the time he or she obtained or created the Notes of Protected Materials and Electronic Notes of Protected Materials, or (c) give all Notes of Protected Materials and Electronic Notes of Protected Materials in his or her possession to the Non-Party that produced the Protected Materials. Any such Reviewing Representative shall attest in writing that he or she has complied with the foregoing provision. Even if no longer engaged in this proceeding, every person

who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Modified Protective Order and their certification.

12. The Assigned ALJ or the Law and Motion ALJ may resolve any disputes arising under this Modified Protective Order. Prior to presenting any dispute under this Modified Protective Order to the Assigned ALJ or the Law and Motion ALJ, the parties to the dispute shall use their best efforts to resolve it. Any Participant that contests the designation of materials as protected shall notify the producing Participant or Non-Party that provided the Protected Materials by specifying in writing the materials whose designation is contested. This Modified Protective Order shall automatically cease to apply to such materials 15 business days after the notification is made unless the designator, within said 15-day period, files a motion with the Assigned ALJ or the Law and Motion ALJ demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Assigned ALJ finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply. A Non-Party shall not waive its objection to becoming a party to this proceeding, or to the Commission's jurisdiction over such Non-Party, as a result of procedures implemented pursuant to this Paragraph 12, including the submission of motions and appearances before the Commission to maintain the designation of materials as Protected Materials, or to otherwise enforce the terms of this Modified Protective Order. None of the Participants or Non-Parties waive their rights to seek additional administrative or judicial remedies after a decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof.

13. a. All documents filed or served in this proceeding that reflect or contain Protected Materials (other than data responses and related correspondence

from one Participant to another), including without limitation all motions, testimony, exhibits, briefs, and hearing transcripts, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Modified Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Assigned ALJ and all Reviewing Representatives who have signed Non-Disclosure Certificates. All parties on the service list shall be served such documents with the Protected Materials redacted therefrom.

b. If any Participant desires to include, utilize, or refer to any Protected Materials or information derived therefrom in testimony or exhibits at hearing in this proceeding, such Participant shall first notify both counsel for the producing Participant or Non-Party and the Assigned ALJ of such desire. Thereafter during the hearing, presentation of such Protected Materials will be governed by procedures determined by the Commission or the Presiding ALJ. All information contained in the Protected Materials may be used for any purposes related to this proceeding and any appeals therefrom, but shall not be used in any other proceeding without the express written consent of the Participant or Non-Party which produced it.

14. Nothing in this Modified Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Modified Protective Order shall be construed as precluding any Participant, or employees, agents, and other representatives of that Participant, whether they are Reviewing Representatives or not, from accessing that Participant's own Protected Materials, and the portions of any documents filed or served in this proceeding that contain such Protected Materials.

16. Nothing in this Modified Protective Order shall preclude any

Participant from requesting the Assigned ALJ, the Law and Motion ALJ, the Commission, or any other body having appropriate authority, to find that this Modified Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Modified Protective Order. The Assigned ALJ, the Law and Motion ALJ or the Commission may alter or amend this Modified Protective Order as circumstances warrant at any time during the course of this proceeding.

17. Each party governed by this Modified Protective Order has the right to seek changes in it as appropriate from the Assigned ALJ, the Law and Motion ALJ, or the Commission. Before seeking any change in this Modified Protective Order, a party must first meet and confer with any other parties interested in the proposed changes.

18. If the Assigned ALJ, the Law and Motion ALJ, or the Commission finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Modified Protective Order for five business days from the date of issuance of such decision, and if the Participant or Non-Party seeking protection files an interlocutory appeal, for an additional 10 business days. None of the Participants or Non-Parties waive their rights to seek additional administrative or judicial remedies after a decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof.

19. Nothing in this Modified Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Modified Protective Order.

20. None of the Participants or Non-Parties waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or

anticipated disclosure of Protected Materials. In particular, any actual or attempted release or use of Protected Materials or Notes of Protected Materials other than as contemplated under this Modified Protective Order may lead to irreparable injury which could not adequately be compensated through Commission remedies or monetary damages, and may therefore be enjoined.

21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Modified Protective Order and shall be used only in connection with this proceeding. Any violation of this Modified Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

Dated: August __, 2003, at San Francisco, California.

Charlotte TerKeurst
Administrative Law Judge

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

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California Gas Company, San Diego Gas)	
and Electric, Southwest Gas, Pacific Gas)	
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Edison and their impact on the Gas Price)	
Spikes experienced at the California)	
Border from March 2000 through May)	
2001)	

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Modified Protective Order in this proceeding, that I have been given a copy of and have read the Modified Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Modified Protective Order. I will use Protected Materials, Notes of Protected Materials, Electronic Notes of Protected Materials, and information contained therein solely for the purpose of litigating the issues in this proceeding. I will not use Protected Materials, Notes of Protected Materials, Electronic Notes of Protected Materials, and information contained therein for any other purpose or in any other regulatory or judicial proceeding. At the conclusion of this proceeding, I will return all Protected Materials and destroy all Notes of Protected Materials and Electronic Notes of Protected Materials. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

By: _____

Title: _____

Representing: _____

I.02-11-040 SRT/jva

Date: _____

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Approving Modified Protective Order on all parties of record in this proceeding or their attorneys of record.

Dated November 24, 2003, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or

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(415) 703-5282 at least three working days in advance of the event.